

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS  
LIABILITY LITIGATION

MDL No. 2419  
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**JOINTLY PROPOSED AGENDA  
FOR THE APRIL 10, 2014 STATUS CONFERENCE**

The Plaintiffs' Steering Committee, Ameridose LLC, New England Compounding Pharmacy, Inc. (through both the Trustee and counsel), and the Official Committee of Unsecured Creditors (through counsel) jointly propose the following agenda for the April 10, 2014 status conference:<sup>1</sup>

**A. Report to the Court.**

1. Status of proposed settlement in principle with NECC principles, related entities, and insurers
2. Status of mediation efforts [Mediation Order, Dkt. No. 394]
3. Status of insurance declaratory actions:
  - a. *Ironshore Specialty Ins. Co. v. Ameridose et al.*, 1:13-cv-13000-FDS (D. Mass.)
  - b. *Certain Underwriters at Lloyd's, London v. Ameridose et al.*, 1:13-cv-12609-FDS (D. Mass.)
  - c. *Landmark Am. Ins. Co. v. ARL Bio Pharma, Inc.*, CJ-2013-3193 (Okla. Dist. Ct.)
  - d. *Star Ins. Co. v. Michigan Pain Specialists PLLC, et al.*, 14-243 CB Brown (Ann Arbor)
4. Status of discovery
  - a. PSC's Motion to Partially Lift Discovery and various oppositions (see below)
  - b. Tennessee Clinic Defendants' motion for reconsideration on access to NECC documents [Dkt. 1037]

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<sup>1</sup> All defendants whose counsel have filed notices of appearance in the MDL were provided an opportunity to comment on the proposed agenda.

- i. Trustee's Opposition [Dkt. 1065]
- 5. Status of litigation track
  - a. PSC's Trial Plan as to St. Thomas and oppositions (see below)
- 6. Status of bankruptcy proceedings
- 7. Status of appeals
- 8. Schedule for future status conferences

**B. Fully-briefed motions.**

- 1. Trustee's Renewed and Supplemental Motion to Transfer [Dkt. 732]
  - a. Fully briefed and argued at March 13, 2014 status conference
  - b. Pleadings filed since oral arguments include:
    - i. Trustee's Amended and Supplemental Exhibit 1 to the Trustee's Renewed Motion to Transfer [Dkt. 1027]
    - ii. Roanoke Frith & Ellerman Plaintiffs' Amended and Supplemental Opposition to the Trustee's Renewed Motion to Transfer [Dkt. 1036]
    - iii. Roanoke-Area LichtensteinFishwick and Brown & Jennings Opposition to the Trustee's Amended and Supplemental Exhibit 1 [Dkt. 1056]
    - iv. Ameridose's removal of the Chance Baker case from Virginia state court, and all pleadings associated therewith
- 2. PSC's Motion to Partially Lift Discovery Stay against Affiliated Defendants [Dkt. 534]
  - a. Trustee's Response [Dkt. 758]
  - b. Affiliated Defendants' Opposition [Dkt. 757]
  - c. Official Committee of Unsecured Creditor's Response [Dkt. 762]
  - d. Tennessee Clinic Defendants' Joinder in PSC's Motion [Dkt. 1041]
  - e. Ameridose Motion to Reply to Tennessee Clinic Defendants' Joinder in the PSC's Discovery Lift [Dkt. 1046]
  - f. GDC Motion to Oppose Tennessee Clinic Defendants' Joinder in the PSC's Discovery Lift [Dkt. 1053]
  - g. Medical Sales Management Motion for Joinder in Ameridose's Motion for Leave to File Reply [Dkt. 1058]

- h. Caddens' and Conigliaros' Motion for Joinder in Ameridose's Motion for Leave to File Reply [Dkt. 1060]
    - i. Trustee's Supplemental Response [Dkt. 1065]
- 3. PSC's Motion for Entry of CMO Establishing Assessment Procedures to Fund Common Benefit Account [Dkt. 790]
  - a. Certain Members of the Official Committee of Unsecured Creditors Response [Dkt. 830]
  - b. Official Committee of Unsecured Creditors Limited Objections [Dkt. 833]
  - c. Trustee's Limited Objections [Dkt. 834]
  - d. Plaintiffs Dale and Allison Devilli Opposition [Dkt. 836]
  - e. Interested Plaintiffs' Counsel Response [Dkt. 839]
  - f. Official Committee of Unsecured Creditors and Trustee Surreply [Dkt. 914]
  - g. Certain Members of the Official Committee of Unsecured Creditors Surreply [Dkt. 915]
  - h. PSC Motion for Leave to File Sur-Surreply [Dkt. 1008]
  - i. Trustee and Official Committee of Unsecured Creditors Motion for Leave to File Reply to PSC Sur-Surreply [Dkt. 1030]
- 4. Motion for Entry of Bellwether Trial and Pre-Trial Scheduling Order (St. Thomas Trial Plan) filed by PSC [Dkt. 837, 838]
  - a. Tennessee Clinic Defendants' Response [Dkt. 858]
  - b. St. Thomas Entities' Response [Dkt. 964]
  - c. UniFirst Response [Dkt. 965]
  - d. PSC Reply [Dkt. 987] (Motion for Leave to File Reply pending)
- 5. Tennessee Clinic Defendants' motion for reconsideration on access to NECC documents [Dkt. 1037]
  - a. Trustee's Opposition [Dkt. 1065]

**C. Briefing in progress.**

- 1. Master Complaint against Affiliated Defendants and responsive pleadings
  - a. April 30, 2014, deadline to file Master Complaint against Affiliated Defendants [Dkt. 881(5)]
- 2. Motions for extension of time / briefing schedules

- a. Liberty Assented to Motion for Extension of Time to Answer Complaint [Dkt. 1019]
  - b. Joint PSC and Cincinnati Pain Motion for Revised Motion to Dismiss Schedule [Dkt. 1055]
  - c. BKC Motion for Revised Motion to Dismiss Briefing Schedule [Dkt. 1026]
3. Ameridose Motion to Destroy Recalled Products (forthcoming)
4. Dispositive Motions:
  - a. Tennessee Clinic Defendants' Motion for Summary Judgment [Dkt. 774, 775, 776, 777, 778]
    - i. PSC Rule 56 (d) Response to Tennessee Clinic Defendants' Motion for Summary Judgment [Dkt. 948]
    - ii. Tennessee Clinic Defendants' Reply to Motion for Summary Judgment [Dkt. 1015]
    - iii. PSC's Motion for Leave to File Surreply to Tennessee Clinic Defendants' Reply to the PSC's Rule 56(d) Response to the Tennessee Clinic Defendants' Motion for Summary Judgment re Compliance with Tenn. Code Ann. § 29-26-122 [Dkt. 1061]
    - iv. Tennessee Clinic Defendants' Response (forthcoming)
  - b. Premier Orthopedic and Sports Medicine Associates of Southern New Jersey, Motion to Dismiss (Global Claims) [Dkt. 831]
    - i. PSC Motion for Surreply (forthcoming)
  - c. Cincinnati Pain Management Consultants Motion to Dismiss [Dkt. 1013, 1014]
    - i. PSC Response [Dkt. 980]
    - ii. Premier Reply [Dkt. 1031]
  - d. Tennessee Clinic Defendants' Motion to Dismiss (Failure to Comply with Tenn. Code. Ann. 29-26-121) [Dkt. 770, 898, 899, 924, 925] and St. Thomas Entities' and Ascension Parties' Motion to Dismiss (Failure to Comply with Tenn. Health Care Liability Act) [Dkt. 779, 780]
    - i. PSC's Motion for Extension of Time to File Response/Reply [Dkt. 1028]

- e. Tennessee Clinic Defendants' Motion to Dismiss (Global Claims) [Dkt. 771, 772] and St. Thomas Entities' Motion to Dismiss (Global Claims) [Dkt. 893, 894] and Ascension Parties' Motion to Dismiss (Global Claims) [Dkt. 895, 896]
  - i. PSC Opposition [Dkt. 1040, 1042, 1043]]
- f. Ascension Health Motion to Dismiss for Failure to State a Claim filed [Dkt. 779, 780]
  - i. PSC Opposition [Dkt. 1043]
- g. BKC Motion to Dismiss [Dkt. 896, 897]
  - i. PSC Opposition [Dkt. 1062]
- h. UniFirst Motion to Dismiss [Dkt. 1050, 1051, 1052]

**D. Matters referred to Judge Boal.**

- 1. PSC's Motion(s) to Compel and for Civil Contempt as to Baltimore Pain Management Center [Dkt. 786, 787]
  - a. Baltimore Pain Management Center Opposition to Motion to Compel [Dkt. No. 842].
  - b. PSC Reply to Opposition by Baltimore Pain Management Center [Dkt. 849]
- 2. Entry of Deposition and ESI Protocols [Dkt. 876, 930, 981, 983, 994, 995, 996, 998, 1009, and 1054]

Dated: April 8, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Kristen Johnson Parker, hereby certify that I caused a copy of the above Jointly Proposed Agenda for the April 10, 2014 Status Conference to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: April 8, 2014

/s/ Kristen Johnson Parker  
Kristen Johnson Parker, BBO # 667261